

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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DANIEL RHYMES PETTY,

Plaintiff,

v.

OPINION and ORDER

SGT. MAYSON, CO D. JOHNSON,  
CO KACZMAREK, TEXTBEHIND and  
AURORA ST. LUKE'S MEDICAL CENTER,

24-cv-83-wmc

Defendants.

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Plaintiff Daniel Rhymes Petty, who is representing himself, has filed a lawsuit complaining that Aurora St. Luke's Medical Center, staff at Stanley Correctional Institution, and TextBehind, a company that processes mail for the prison, mishandled his private medical information in violation of the Health Insurance Portability and Accountability Act ("HIPAA"). However, plaintiff's complaint must be dismissed because "HIPAA does not furnish a private right of action." *Stewart v. Parkview Hosp.*, 940 F.3d 1013, 1015 (7th Cir. 2019). Congress left enforcement for violations to the Department of Health and Human Services, not to private plaintiffs. *Id.* In addition, any state law claims for negligence, invasion of privacy, or breach of fiduciary duty would need to be filed in state court, as this court cannot exercise subject matter jurisdiction over state law claims brought against defendants who are citizens of the same state as plaintiff.

It is unlikely that plaintiff can file an amended complaint relating to his private medical information that would state a claim over which this court would have subject matter jurisdiction. But the court of appeals has cautioned against dismissing a case

brought by an unrepresented plaintiff without giving the plaintiff a chance to amend the complaint. *Felton v. City of Chicago*, 827 F.3d 632, 636 (7th Cir. 2016). Therefore, the court will give plaintiff an opportunity to amend his complaint to state a valid federal claim. If he fails to do so by the date below, the case will be dismissed with prejudice.

ORDER

IT IS ORDERED that:

- 1) Plaintiff's complaint is DISMISSED without prejudice for failure to state a claim upon which relief may be granted.
- 2) Plaintiff may until December 4, 2024 to file an amended complaint that states a plausible claim under federal law. If he fails to file an amended complaint by December 3, this case will be dismissed with prejudice.

Entered November 13, 2024.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge